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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,441

09/28/2006

Armando Garcia Luna

3179-0102

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7590

03/28/2008

ROTHWELL, FIGG, ERNST & MANBECK, P.C.

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WASHINGTON, DC 20005

EXAMINER

GREEN, ANTHONY J

ART UNIT

PAPER NUMBER

1793

NOTIFICATION DATE

DELIVERY MODE

03/28/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary	Application No. 10/599,441	Applicant(s) GARCIA LUNA ET AL.	
	Examiner Anthony J. Green	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/28/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Response to Amendment

1. The preliminary amendment submitted with the application has been entered.
2. The substitute specification has been entered.

Specification

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. Also the phrase "ITS APPLICATION LIKE POZZOLANIC MATERIAL" makes no sense.

4. The disclosure is objected to because of the following informalities:

In the specification the use of the term "witness" in paragraphs[0033], [0046]-[0052], [0068], [0103], [0104], [0106], [0116], [0118]m [0120], [0119], [0120], [0122], [0123] and Table 9 is not understood.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2, 5-6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kirilishin (US Patent No. 4,234,347).

The reference teaches in the claims, a binder for a chemically resistant concrete, comprising from 30 to 80% by weight of a finely divided quartz sand having a specific surface area of from 1000 to 5000 cm²/g and from 20 to 70% by weight of at least one crystalline modification of silica selected from the group consisting of tridymite and cristobalite and containing on the surface of its particles from 0.5 to 6 mol percent at least one R₂O oxides, wherein R is sodium or potassium.

The instant claims appear to be met by the reference as it teaches a silica having both cristobalite and tridymite in amounts recited in the instant claims. As for the properties of claims 5-6 and 9 these properties appear to be inherent since the composition is the same absent evidence showing otherwise. The pozzolanic activity also appears to be an inherent property possessed by the composition of the reference.

7. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Specification No. JP2001-003034.

The reference teaches a silica composition having a mean particle size 0.1-22 microns, a crystallite size of 5-200 nm, and comprising 50-100 wt.% tridymite and 0-50 wt.% cristobalite. It is produced by mixing a siliceous material, having at least 95 wt.% SiO₂, with an alkaline metal or alkaline earth metal compound and firing the mixture.

The instant claims appear to be met by the reference as it teaches a silica having both cristobalite and tridymite in amounts recited in the instant claims. As for the

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properties of claims 5-6 and 9 these properties appear to be inherent since the composition is the same absent evidence showing otherwise. As for the crystal size the reference teaches a crystal size that is encompassed by the instant claims. The pozzolanic activity also appears to be an inherent property possessed by the composition of the reference.

Claim Objections

8. Claims 1-18 are objected to because of the following informalities:

In the claims the phrase "characterized because" is not understood as it is not conventional US patent terminology. Applicant should use conventional patent terminology such as "wherein" or other terminology. Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the claims the phrase "characterized because" is not understood.

In claims 5-9 and 11 the phrase "characterized because has" makes no sense and accordingly it renders the claim confusing.

In claim 8 it is unclear as to what is meant by the phrase "equal or minor to 40 μm ."

In claim 9 it is unclear as to what is meant by the phrase "equal or minor to 2.4 g/cm^3 ."

In claim 10 it is unclear as to what the terms "method" and "ASTM-C114" represent.

In claim 12 the term "obtention" is not understood". In part b), the phrase "those parts" is not understood and lacks proper antecedent basis. In part c) the phrase "the obtained parts" lacks proper antecedent basis. In part d) of the claim it is unclear as to whether the phrase "the obtained parts in c)" refers to the parts that are selected or the obtained parts from b). Also in part d) of the claim the phrase "until obtaining a particle size" is not completely understood. In part e) the phrase "the material obtained before" lacks proper antecedent basis and it is unclear as what material is being referred to. In part f) of the claim the phrase "until obtaining a mesh particle size" is not completely understood.

In claim 13 the phrase "the natural deposit" is inconsistent with the terminology used in claim 12 as claim 12 refers to "natural deposits". Applicant needs to use consistent terminology.

In claim 16 the term "obtention" is not understood". In part b), the phrase "those parts" is not understood and lacks proper antecedent basis. In part c) the phrase "the obtained parts" lacks proper antecedent basis. In part d) of the claim it is unclear as to whether the phrase "the obtained parts in c)" refers to the selected parts or the obtained

parts from b). Also in part d) of the claim the phrase "until obtaining a particle size" is not completely understood. In part e) of the claim the phrase "until obtaining a mesh particle size" is not completely understood.

In claim 17 the phrase "the natural deposit" is inconsistent with the terminology used in claim 16 as claim 16 refers to "natural deposits". Applicant needs to use consistent terminology.

Allowable Subject Matter

11. Claims 10-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and provided that all claims objection and 112 second paragraph rejections are overcome.

Information Disclosure Statement

12. The remaining references have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the above rejections.

References Cited By The Examiner

13. The remaining references have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the above rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367. The examiner can normally be reached on Monday-Thursday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony J. Green/

Primary Examiner
Art Unit 1793

ajg
March 21, 2008